

APPEAL NO. 010640

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on May 22, 2000, with the record closing on January 23, 2001. With regard to the issue before her, the hearing officer determined that the correct impairment rating (IR) for the respondent (claimant) is 26%. The appellant (carrier) appeals that determination, contending that the hearing officer erred in adopting the designated doctor's IR because the rating was not calculated properly and the designated doctor's report was contrary to the great weight and preponderance of the medical evidence. The claimant did not respond.

DECISION

Affirmed.

Dr. L was appointed by the Texas Workers' Compensation Commission (Commission) as the designated doctor to resolve a dispute concerning the proper IR of the claimant. Dr. L examined the claimant on March 30, 1999, and determined that the claimant had a 26% IR.

The carrier then requested Dr. S and Dr. C to review Dr. L's report and advise as to whether the IR was properly performed. Those doctors noted in their reports that review of the range of motion (ROM) tests did not reveal whether T12 measurements were taken. Dr. S and Dr. C contended that, without the T12 measurements, the validity of the lumbar measurements could not be determined. The hearing officer left the record open to determine if the T12 movement was measured when the ROM testing was conducted. In response to a Commission inquiry, the examining facility used by Dr. L explained that measurements for ROM were performed on a computer which automatically incorporated the T12 measurements. Also in response to Commission inquiry, Dr. L stated that despite the questions of validity raised by the other doctors, he reaffirmed his original IR assessment.

Dr. S also testified that if the claimant's lumbar motion was restricted to 13-17E, he probably could not walk and he would not be surprised if a person with that restriction used a cane. The claimant testified that he uses a cane 70% of the time.

Section 408.125(e) of the 1989 Act provides that the report of the designated doctor selected by the Commission shall have presumptive weight and the Commission shall base the IR on that report unless the great weight of the other medical evidence is to the contrary. The Appeals Panel has noted the important and unique position occupied by the designated doctor under the 1989 Act (Texas Workers' Compensation Commission Appeal No. 92412, decided September 28, 1992) and has stated that "a 'great weight' determination amounts to more than a mere balancing or preponderance of the medical evidence and that a designated doctor's report should not be rejected 'absent a substantial basis' to do so." *Id.*

In this case, the hearing officer determined that the great weight of other medical evidence was not contrary to the designated doctor's assessment of a 26% IR. We are satisfied that the hearing officer's decision is supported by sufficient evidence and is not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986). Accordingly, the decision and order of the hearing officer are affirmed.

Philip F. O'Neill
Appeals Judge

CONCUR:

Michael B. McShane
Appeals Judge

Robert W. Potts
Appeals Judge